

REMARKS

Claims 1 to 16 were rejected under 35 U.S.C. 102/103 (i.e. that the prior art is allegedly the same as that of the claim but the function is not explicitly disclosed by the reference) as anticipated by or obvious over Harsley (5,799,376) (the "376 Patent"). The Examiner has asserted that "Harsley teaches a tie strip with cells and latching members that appear to be substantially similar to those disclosed in the instant specification as supporting the instant claim language." The Examiner further asserts that it "is unclear how the instant structure supports the "saddle" functional language, while that of Harsley does not" and that "[a]s the PTO does not have experimental facilities, the burden of proof is shifted to applicant." The Applicant respectfully traverses this rejection.

The Applicant thanks the Examiner for the courtesy extended in the telephonic interview in which the '376 Patent and distinctions with the instant invention were discussed. As was discussed during the interview, the notch of the instant invention that is located in the rear wall of a cell promotes the saddle shape folding of the walls of that cell when another, penetrant, cell is pulled through the aperture of that (penetrated) cell. In addition, a notch in the rear wall of the penetrant cell promotes the out of plane folding of the penetrant cell as it is pulled through the penetrated cell. The saddled shaped folding of the walls of the penetrated cell increases the width of the aperture without stretching the material of the walls of the penetrated cell. The small notch (and significant cell wall thickness at the notch) shown in the '376 Patent does not promote folding of either the penetrated or penetrant cells of the '376 Patent. Instead, the notch

of the '376 Patent allows the rear wall of the penetrant cell to bend forwards in the plane of the strip to promote the longitudinal extension of the penetrant cell as it is pulled through the penetrated cell. This in fact acts to inhibit any out of plane curling of the penetrant and penetrated cells of the '376 Patent.

Claim 1 has been amended to specifically recite that the thickness of the rear wall of the aperture of a cell of the instant invention is substantially less at the notch than along the remainder of the aperture. As is discussed above, such structure is not taught or disclosed by the '376 Patent. Support for this amendment is found for example in Figures 7, 8, 16 and 17, and pages 8 through 12 of the specification. As the prior art cited neither discloses nor teaches the notch as now claimed, the Applicant respectfully requests that the claim rejections be withdrawn.

During the interview, the Examiner also discussed Brown (U.S. 4,150,463), which the Examiner suggested shows a notch with a narrow or thin wall behind it in Figure 18, and that also shows bending about a longitudinal axis. Although Brown does appear to show a notch with a narrower wall behind the notch, Brown does not show or disclose a cell structure as is claimed in the instant invention in which the walls of a penetrated cell are folded, or a capable of being folded, into a saddle shape as a penetrant cell is pulled through the penetrated cell. Instead, Brown discloses a structure in which only the penetrant cell folds. The structure of the aperture of Brown, which includes non-uniform wall thicknesses around the cell, prevents folding of the penetrated cell. In contrast, the notch of the instant invention, which is located in the rear wall of cells having generally loop-shaped apertures actually promotes the saddle shaped folding of the penetrated

cell. Claim 1 has been amended to specifically recite this feature. Support for this amendment is found for example at page 13, line 35 through page 14, line 7 of the specification.

New claims 17 and 18, further distinguish the instant invention from Brown. As is set forth in claim 17, the wall portions of each separate cell of the instant invention have a roughly constant wall thickness other than at the notch. In contrast, the wall thickness of the cells of Brown are not constant or uniform. Support for claim 17 is found for example at page 8, lines 17-25 of the specification. As is set forth in claim 18, the front wall of a following cell closes a gap formed by the notch in the rear wall of a leading cell to form a closed aperture for the leading cell. In contrast, Brown shows an extended solid portion between each cell. Support for claim 18 is found for example at page 5, lines 32-34 of the specification.

As is set forth in claim 19 the notch defines the rearmost part of the aperture. Support for claim 19 is found for example in Fig. 5 and at page 8 of the speciation.

INVENTOR: HARSLEY, Andrew
Serial No. 10/560,137

Reconsideration of the application as amended respectfully is requested. The foregoing amendment and remarks are believed to be responsive to every matter raised in the office action. If, however, some matter has been overlooked, an opportunity to correct the oversight would be appreciated.

Respectfully submitted,



Bryan P. Stanley
Patent Office Reg. No. 44,352
SONNENSCHN NATH & ROSENTHAL LLP
PO Box #061080
Wacker Drive Station
Sears Tower
Chicago, IL 60606-1080
Telephone: (816) 460-2410
Facsimile: (816) 531-7545

Attorneys for Applicant